

ESTTA Tracking number: **ESTTA381390**

Filing date: **12/01/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

| | |
|---------------------------------------|--|
| Name | Jarritos, Inc. |
| Granted to Date of previous extension | 12/01/2010 |
| Address | 500 West Overland Avenue Suite 300 El Paso, TX 79901 UNITED STATES |
| Correspondence information | Christine Lebron Dykeman McKee, Voorhees & Sease, P.L.C. 801 Grand Ave. Suite 3200 Des Moines, IA 50309 UNITED STATES mvslit@ipmvs.com Phone:515-288-3667 |

Applicant Information

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|------------------------|---|------------------------|------------|
| Application No | 77949564 | Publication date | 08/03/2010 |
| Opposition Filing Date | 12/01/2010 | Opposition Period Ends | 12/01/2010 |
| Applicant | Carlos Garciarce Ramirez Adofo Prieto 1714-A co. Del Calle c.p, MEXICO | | |


Goods/Services Affected by Opposition


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| Class 029. All goods and services in the class are opposed, namely: Frozen and dried fruit; fruit concentrate and powders as ingredients of food products, namely, ice cream, sorbet, ice cones, frappes, and frozen confections |
| Class 030. All goods and services in the class are opposed, namely: concentrates and powders used in the preparation of tea-based beverages; flavorings for beverages |
| Class 032. All goods and services in the class are opposed, namely: concentrates and powders used in the preparation of fruit-based beverages; frozen fruit beverage; fruit flavored beverages; non-alcoholic cocktail mixes, namely, fruit concentrate and powder for non-alcoholic drinks |
| Class 033. All goods and services in the class are opposed, namely: Alcoholic cocktail mixes, namely, fruit concentrate and power for alcoholic drinks |

Grounds for Opposition

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| Priority and likelihood of confusion | Trademark Act section 2(d) |
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Marks Cited by Opposer as Basis for Opposition


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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 1191311 | Application Date | 08/12/1980 |
| Registration Date | 03/02/1982 | Foreign Priority Date | NONE |
| Word Mark | JARRITOS | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 032. First use: Soft Drinks | | |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 1854805 | Application Date | 07/20/1990 |
| Registration Date | 09/20/1994 | Foreign Priority Date | NONE |
| Word Mark | JARRITOS | | |
| Design Mark |  | | |
| Description of Mark | The mark consists of a plurality of raised areas in the shape of jugs around the bottom of the bottle and a plurality of raised areas in the shape of jugs around the neck of bottle; the word "JARRITOS" appears at the base of the neck of the bottle and three jugs are positioned between the lower and upper raised areas in the shape of jugs and the word "JARRITOS" appears below the three jugs. | | |
| Goods/Services | Class 032. First use: soft drinks | | |


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|-----------------------|------------|------------------|------------|
| U.S. Registration No. | 2173641 | Application Date | 08/29/1996 |
| Registration Date | 07/14/1998 | Foreign Priority | NONE |


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|---------------------|---|------|--|
| | | Date | |
| Word Mark | JARRITOS | | |
| Design Mark | | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 032. First use: First Use: 1996/11/00 First Use In Commerce: 1996/11/00 mineral water | | |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 2360415 | Application Date | 09/24/1999 |
| Registration Date | 06/20/2000 | Foreign Priority Date | NONE |
| Word Mark | JARRITOS | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 032. First use: First Use: 1988/12/00 First Use In Commerce: 1988/12/00 Soft drinks | | |


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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3544108 | Application Date | 12/20/2006 |
| Registration Date | 12/09/2008 | Foreign Priority Date | NONE |
| Word Mark | JARRITOS | | |
| Design Mark |  | | |
| Description of Mark | The mark consists of three jug logo. | | |
| Goods/Services | Class 025. First use: First Use: 2005/02/09 First Use In Commerce: 2005/02/09 Caps; Footwear; Hats; Headgear, namely, hats and caps; Jackets; Pants; Shirts; Shorts; Skirts; Socks; Sport shirts; Sports jackets; Sports shirts; Sweat pants; Sweat shirts; T-shirts | | |


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|-------------------|---------|------------------|------------|
| U.S. Registration | 3727464 | Application Date | 12/11/2008 |
|-------------------|---------|------------------|------------|

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|---------------------|---|-----------------------|------|
| No. | | | |
| Registration Date | 12/22/2009 | Foreign Priority Date | NONE |
| Word Mark | JARRITOS PONCHE NAVIDENO | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 032. First use: First Use: 2008/10/00 First Use In Commerce: 2008/10/00 Fruit beverage | | |


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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3276571 | Application Date | 02/04/2005 |
| Registration Date | 08/07/2007 | Foreign Priority Date | NONE |
| Word Mark | JARRITOS | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 032. First use: First Use: 2005/06/21 First Use In Commerce: 2005/06/21 Flavored drinking water | | |


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|-----------------------|------------------------|-----------------------|------------|
| U.S. Registration No. | 3294993 | Application Date | 06/23/2005 |
| Registration Date | 09/18/2007 | Foreign Priority Date | NONE |
| Word Mark | DE LA FAMILIA JARRITOS | | |

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|---------------------|---|
| Design Mark |  |
| Description of Mark | The mark consists of 3-jug design with Agave plant background. |
| Goods/Services | Class 032. First use: First Use: 2005/09/06 First Use In Commerce: 2005/09/06 non-alcoholic beverages, namely soft drinks; syrups and concentrates for making beverages, namely soft drinks |

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|-----------------------|---|-----------------------|------------|
| U.S. Registration No. | 3407220 | Application Date | 07/05/2006 |
| Registration Date | 04/01/2008 | Foreign Priority Date | NONE |
| Word Mark | JARRITOS KIDS | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | Class 032. First use: First Use: 2006/10/12 First Use In Commerce: 2006/10/12 Fruit flavored soft drinks; Fruit-flavored beverages; Fruit-flavored drinks; Preparations for making fruit flavored drinks; Soft drinks | | |

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|-----------------------|------------|-----------------------|------------|
| U.S. Registration No. | 3412833 | Application Date | 06/21/2005 |
| Registration Date | 04/15/2008 | Foreign Priority Date | NONE |
| Word Mark | JARRITOS | | |

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|---------------------|---|
| Design Mark |  |
| Description of Mark | NONE |
| Goods/Services | Class 032. First use: First Use: 2005/06/00 First Use In Commerce: 2005/06/00 flavored drinking water |

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3532651 | Application Date | 07/10/2006 |
| Registration Date | 11/11/2008 | Foreign Priority Date | NONE |
| Word Mark | JARRITOS KIDS | | |
| Design Mark |  | | |
| Description of Mark | The mark consists of the wording "JARRITOS KIDS" in stylized form with line and circle design elements. | | |
| Goods/Services | Class 032. First use: First Use: 2006/10/12 First Use In Commerce: 2006/10/12 Fruit flavored soft drinks; Fruit-flavored beverages; Preparations for making fruit flavored drinks; Soft drinks | | |

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| Attachments | 73274177#TMSN.gif (1 page)(bytes) 74080042#TMSN.gif (1 page)(bytes) 75809105#TMSN.gif (1 page)(bytes) 77068527#TMSN.jpeg (1 page)(bytes) 77631029#TMSN.jpeg (1 page)(bytes) 78560897#TMSN.jpeg (1 page)(bytes) 78656810#TMSN.jpeg (1 page)(bytes) 78922820#TMSN.jpeg (1 page)(bytes) 78654840#TMSN.jpeg (1 page)(bytes) 78925507#TMSN.jpeg (1 page)(bytes) Notice of Opposition new.pdf (5 pages)(38393 bytes) |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

| | |
|-----------|----------------------------|
| Signature | /Christine Lebron-Dykeman/ |
| Name | Christine Lebron Dykeman |
| Date | 12/01/2010 |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

JARRITOS, INC.,

Opposer,

v.

CARLOS GARCJARCE RAMIREZ,

Applicant.

Opposition No: _____

In the matter of:

Application No: 77/949,564

Mark: JARRO FRUT

Published in Official Gazette on:

August 3, 2010

NOTICE OF OPPOSITION

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

Jarritos, Inc. believes that it will be damaged by registration of the marks shown in Serial No. 77/949,564 and hereby opposes registration of that mark. Serial No. 77/949,564 is an application of Carlo Garcjarce Ramirez, filed March 3, 2010 and published for opposition in the Official Gazette August 3, 2010. The grounds for opposition are as follows:

1. Jarritos, Inc. ("Opposer") is a Delaware corporation having a principal place of business at 500 West Overland Avenue, Suite 300, El Paso, Texas 79901.
2. Upon information and belief, Mr. Ramirez ("Applicant") is an individual residing in Mexico at Adolfo Prieto 1714-A Co. Del Calle C.P. Mexico.

3. Opposer is the owner of a family and marks incorporating the term "Jarritos", including the following:

JARRITOS, Reg. No. 1,191,311
JARRITOS, Reg. No. 1,854,805
JARRITOS, Reg. No. 2,173,641
JARRITOS, Reg. No. 2,360,415
JARRITOS, Reg. No. 3,544,108
JARRITOS PONCHE NAVIDENO, Reg. No. 3,727,464
JARRITOS, Reg. No. 3,276,571
DE LA FAMILIAR JARRITOS, Reg. No. 3,294,993
JARRITOS KIDS, Reg. No. 3,407,220
JARRITOS, Reg. No. 3,412,833
JARRITOS KIDS, Reg. No. 3,532,651

(collectively "the JARRITOS family of marks") These marks are for use in connection with, among other things, Class 32 goods including fruit flavored beverages, fruit flavored drinks, fruit flavored soft drinks, preparations for making fruit flavored drinks soft drinks, mineral water, flavored drinking water, non-alcoholic beverages, syrups and concentrates for making beverages. Opposer has used the JARRITOS mark in commerce in the United States since at least as early as 1986, with regard to its goods.

4. The English translation of the word "Jarritos" is "little jugs" or "pitchers".

5. By reason of Opposer's long and extensive use of the JARRITOS family of marks, the marks have achieved widespread and favorable public appearance and recognition and have become an asset of great value as a symbol of Opposer's goods and goodwill.

6. Opposer has invested a great deal of time and money in promoting its goods under the JARRITOS family of marks and it continues to use and promote these goods under these marks.

7. By virtue of Opposer's continuous, exclusive and widespread use of the JARRITOS family of marks, the marks are entitled to a broad scope of protection.

8. On March 3, 2010, Applicant filed an intent-to-use application, Serial No. 77/949,564, to register the mark JARRO FRUT for use in connection with frozen and dried fruit; fruit concentrate and powders as ingredients of food products, namely, ice cream, sorbet, ice cones, frappes, and frozen confections; concentrates and powders used in the preparation of tea-based beverages; flavorings for beverages; concentrates and powders used in the preparation of fruit-based beverages; frozen fruit beverage; fruit flavored beverages; non-alcoholic cocktail mixes, namely, fruit concentrate and powder for non-alcoholic drinks; and alcoholic cocktail mixes, namely, fruit concentrate and powder for alcoholic drinks.

9. The English translation of the word "Jarro" is "jar" or "jug".

10. Opposer acquired trademark rights in and to the JARRITOS family of marks for Opposer's goods that pre-date the actual and/or constructive use of Applicant of the mark JARRO FRUT.

11. Applicant's mark has the same or highly similar sight, sound, meaning and commercial impression in comparison to Opposer's mark. As such, Applicant's mark is likely to be confused with Opposer's mark.

12. The addition of the word "frut" in Applicant's mark is not sufficient to distinguish these marks as noted above, both marks are used in connection with, among other things, fruit flavored beverages.

13. Applicant's intended goods are also highly similar or identical to Opposer's. Notably, both Applicant and Opposer's goods relate to, among other things, "fruit flavored beverages".

14. Upon information and belief, Applicant and Opposer's goods are intended to be advertised and sold through similar channels of trade.

15. Applicant's mark "JARRO FRUT," when used for goods recited in the application, is likely to cause confusion, mistake or deception within the meaning of § 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).

16. Use and application for registration by Applicant of the JARRO FRUT mark is without Opposer's consent.

17. Registration of the mark JARRO FRUT by Applicant will provide Applicant with the prima facie exclusive rights therein, and would harm Opposer by interfering with Opposer's exclusive rights in and to the JARRITOS family of marks.

18. Opposer has the right to continue using the JARRITOS family of marks in connection with its goods and related goods and services and to use the mark without interference by Applicant and without confusion, mistake or deception.

19. Opposer hereby appoints McKee, Voorhees & Sease, PLC, 801 Grand Avenue, Suite 3200, Des Moines, Iowa 50309, as its attorney, to act on its behalf and to receive all correspondence related to this opposition.

WHEREFORE, Opposer believes it will be damaged by the registration of JARRO FRUT by Applicant and prays that the registration be denied.

Respectfully submitted,



Christine Lebrón-Dykeman
Bradley J. Powers
McKEE, VOORHEES & SEASE, P.L.C.
801 Grand Avenue, Suite 3200
Des Moines, IA 50309-2721
Phone: 515-288-3667
Fax: 515-288-1338
Email: christine.lebrondykeman@ipmvs.com
Email: brad.powers@ipmvs.com
Email: mvslit@ipmvs.com

ATTORNEYS FOR OPPOSER, JARRITOS, INC.

CERTIFICATE OF SERVICE

I hereby declare that the foregoing instrument was served upon the following this 1st day of December, 2010, via:

- ☐ 1st Class U.S. Mail
- ☐ Facsimile
- ☐ Email (.pdf)

- ☒ Federal Express
- ☐ Hand Delivery
- ☐ Other _____

Melissa LaBauve
HAYNES AND BOONE, LLP
2323 Victory Ave Ste 700
Dallas, TX 75219-7673
Phone: 713-547-2588
Fax: 214-200-0853



Christine Lebrón-Dykeman